



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

August 13, 1996

Mr. Charles P. Kuratko
Chair
State Board of Examiners for
Speech-Language Pathology and Audiology
1100 West 49th Street
Austin, Texas 78756-3183

Letter Opinion No. 96-086

Re: Whether article 4566-1.16A, which requires a business entity that is engaged in the fitting and dispensing of hearing instruments to file a bond, surety in lieu of bond, cash deposit, or other negotiable security, is applicable to a person who practices audiology pursuant to article 4512j, V.T.C.S. (ID# 36860)

Dear Mr. Kuratko:

You have asked this office the effect of article 4566-1.19(4), V.T.C.S., upon the surety bonding requirements of article 4566-1.16A, V.T.C.S for those engaged in fitting and dispensing hearing aids. You ask first whether audiologists and audiology interns licensed under article 4512j, V.T.C.S. are exempt from these requirements. You next ask whether business enterprises comprising such licensed audiologists and audiology interns are also exempted.

Article 4566-1.16A, V.T.C.S., requires a "sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments" to file a bond or surety in the amount of \$10,000 with the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to insure the payment of state and local taxes as well as judgments against such legal entities for negligence or breach of contract related to the dispensing of hearing instruments. This security requirement may be met by filing with the committee a cash deposit or negotiable security. *Id.*

You note that article 4566-1.19 provides:

(4) An audiologist or an audiology intern licensed under Chapter 381, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512j, Vernon's Texas Civil Statutes), is exempt from the provisions of this Act.

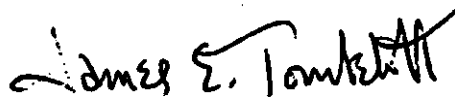
You ask whether such audiologists or audiology interns are therefore exempt from the payment of the surety required by article 4566-1.16A. We agree that, by the express terms of article 4566-1.19(4), such persons are excepted from the security requirement.

You further inquire, however, whether a business entity which employs only such exempt persons is also exempt. You suggest that such an entity is not engaged in fitting and dispensing hearing aids, but is rather practicing audiology. We cannot agree. The exemption of article 4566-1.19(4) applies by its terms to licensed persons, not to a business enterprise comprising such licensed persons. Exceptions are to be construed according to their fair and proper meaning, and the existence of a particular exception indicates that the legislature intends no other exceptions. 67 TEX. JUR. 3D *Statutes* § 120 (1989). Accordingly, we construe article 4566-1.19(4) to apply solely to audiologists and audiology interns, and not to business enterprises composed of such persons.¹

S U M M A R Y

Article 4566-1.19(4), V.T.C.S. exempts licensed audiologists and audiology interns who are engaged in fitting and dispensing hearing aids from the surety bonding requirements of article 4566-1.16A, V.T.C.S., but does not exempt business enterprises composed of such licensed persons from such requirements.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee

¹In the instance of an audiologist who is, in the terms of article 4566-1.16A, V.T.C.S., "a sole proprietor," however, we believe the exemption must apply to such a person since otherwise it would be read out of the statute.